

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
and Petition to Revoke Probation)
Against:)**

THOMAS H.T. LIN, M.D.)

Case No. 800-2016-024865

**Physician's and Surgeon's)
Certificate No. A64211)**

Respondent)

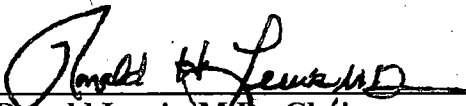
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on January 19, 2018.

IT IS SO ORDERED: December 21, 2017.

MEDICAL BOARD OF CALIFORNIA


**Ronald Lewis, M.B., Chair
Panel A**

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH
Deputy Attorney General
4 State Bar No. 173955
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 269-6538
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

13 **THOMAS H.T. LIN, M.D.**
14 **1746 N. Euclid Ave.**
Upland, CA 91784

15 **Physician's and Surgeon's Certificate No. A**
64211,

16 Respondent.

Case No. 800-2016-024865

OAH No. 2017050393

17 **STIPULATED SETTLEMENT AND**
18 **DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 PARTIES

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Vladimir
25 Shalkevich, Deputy Attorney General.

26 2. Respondent THOMAS H.T. LIN, M.D. (Respondent) is represented in this
27 proceeding by attorney Tracy Green, Esq., whose address is: Tracy Green, Esq., Green &
28 Associates, 800 West 6th Street, Suite 450, Los Angeles, CA 90017, (213) 233-2261.

3. On or about December 25, 1997, the Board issued Physician's and Surgeon's Certificate No. A 64211 to THOMAS H.T. LIN, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation and Petition to Revoke Probation No. 800-2016-024865, and will expire on November 30, 2017, unless renewed.

JURISDICTION

4. Accusation and Petition to Revoke Probation No. 800-2016-024865 was filed before the Board, and is currently pending against Respondent. The Accusation and Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on November 16, 2016. Respondent timely filed his Notice of Defense contesting the Accusation and Petition to Revoke Probation.

5. A copy of Accusation and Petition to Revoke Probation No. 800-2016-024865 is attached as exhibit A and incorporated herein by reference. The Board's prior Decision in the case number 11-2010-209578 is attached as exhibit 1 to exhibit A, and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation and Petition to Revoke Probation No. 800-2016-024865. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation and Petition to Revoke Probation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

///

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation and Petition to Revoke Probation No. 800-2016-024865.

10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 64211 issued to Respondent THOMAS H.T. LIN, M.D. is revoked. However, the revocation is stayed and

Respondent's certificate shall remain on probation for ten (10) years pursuant to Board's Decision in the case number 11-2010-209578, which is attached hereto as exhibit 1 to exhibit A and is incorporated herein by reference, and which commenced on August 12, 2015, on the same terms and conditions ordered therein, and with additional terms and conditions as follows:

1. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS: Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to Respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that Respondent is a threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the

1 following factors: Respondent's license type; Respondent's history; Respondent's documented
2 length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use);
3 Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical
4 history and current medical condition; the nature, duration and severity of Respondent's
5 substance abuse problem or problems; and whether Respondent is a threat to himself or herself or
6 the public.

7 For all clinical diagnostic evaluations, a final written report shall be provided to the Board
8 no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator
9 requests additional information or time to complete the evaluation and report, an extension may
10 be granted, but shall not exceed thirty (30) days from the date the evaluator was originally
11 assigned the matter.

12 The Board shall review the clinical diagnostic evaluation report within five (5) business
13 days of receipt to determine whether Respondent is safe to return to either part-time or full-time
14 practice and what restrictions or recommendations shall be imposed on Respondent based on the
15 recommendations made by the evaluator. Respondent shall not be returned to practice until he or
16 she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating
17 that he or she has not used, consumed, ingested, or administered to himself or herself a prohibited
18 substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of
19 Regulations.

20 Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall
21 not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic
22 evaluation, including any and all testing deemed necessary by the examiner, the Board or its
23 designee, shall be borne by the licensee.

24 Respondent shall not engage in the practice of medicine until notified by the Board or its
25 designee that he or she is fit to practice medicine safely. The period of time that Respondent is
26 not practicing medicine shall not be counted toward completion of the term of probation.
27 Respondent shall undergo biological fluid testing as required in this Decision at least two (2)
28 times per week while awaiting the notification from the Board if he or she is fit to practice

1 medicine safely.

2 Respondent shall comply with all restrictions or conditions recommended by the examiner
3 conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified
4 by the Board or its designee.

5 2. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)
6 days of the effective date of this Decision, Respondent shall provide to the Board the names,
7 physical addresses, mailing addresses, and telephone numbers of any and all employers and
8 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's
9 worksite monitor, and Respondent's employers and supervisors to communicate regarding
10 Respondent's work status, performance, and monitoring.

11 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or
12 Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff
13 privileges.

14 3. BIOLOGICAL FLUID TESTING¹. Respondent shall immediately submit to
15 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
16 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
17 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall
18 make daily contact with the Board or its designee to determine whether biological fluid testing is
19 required. Respondent shall be tested on the date of the notification as directed by the Board or its
20 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at
21 any time, including weekends and holidays. Except when testing on a specific date as ordered by
22 the Board or its designee, the scheduling of biological fluid testing shall be done on a random
23 basis. The cost of biological fluid testing shall be borne by the Respondent.

24 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.
25 During the second year of probation and for the duration of the probationary term, up to five (5)
26 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no

27 _____
28 ¹ It is the intent of the parties that this condition shall replace condition 6 in the Board's
Decision in case number 11-2010-209578.

1 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing
2 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number
3 of random tests to the first-year level of frequency for any reason.

4 Prior to practicing medicine, Respondent shall contract with a laboratory or service,
5 approved in advance by the Board or its designee, that will conduct random, unannounced,
6 observed, biological fluid testing and meets all of the following standards:

7 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry
8 Association or have completed the training required to serve as a collector for the United
9 States Department of Transportation.

10 (b) Its specimen collectors conform to the current United States Department of
11 Transportation Specimen Collection Guidelines.

12 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published
13 by the United States Department of Transportation without regard to the type of test
14 administered.

15 (d) Its specimen collectors observe the collection of testing specimens.

16 (e) Its laboratories are certified and accredited by the United States Department of Health
17 and Human Services.

18 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day
19 of receipt and all specimens collected shall be handled pursuant to chain of custody
20 procedures. The laboratory shall process and analyze the specimens and provide legally
21 defensible test results to the Board within seven (7) business days of receipt of the
22 specimen. The Board will be notified of non-negative results within one (1) business day
23 and will be notified of negative test results within seven (7) business days.

24 (g) Its testing locations possess all the materials, equipment, and technical expertise
25 necessary in order to test Respondent on any day of the week.

26 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens
27 for the detection of alcohol and illegal and controlled substances.

28 (i) It maintains testing sites located throughout California.

1 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line
2 computer database that allows the Respondent to check in daily for testing.

3 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff
4 access to drug test results and compliance reporting information that is available 24 hours a
5 day.

6 (l) It employs or contracts with toxicologists that are licensed physicians and have
7 knowledge of substance abuse disorders and the appropriate medical training to interpret
8 and evaluate laboratory biological fluid test results, medical histories, and any other
9 information relevant to biomedical information.

10 (m) It will not consider a toxicology screen to be negative if a positive result is obtained
11 while practicing, even if the Respondent holds a valid prescription for the substance.

12 Prior to changing testing locations for any reason, including during vacation or other travel,
13 alternative testing locations must be approved by the Board and meet the requirements above.

14 The contract shall require that the laboratory directly notify the Board or its designee of
15 non-negative results within one (1) business day and negative test results within seven (7)
16 business days of the results becoming available. Respondent shall maintain this laboratory or
17 service contract during the period of probation.

18 A certified copy of any laboratory test result may be received in evidence in any
19 proceedings between the Board and Respondent.

20 If a biological fluid test result indicates Respondent has used, consumed, ingested, or
21 administered to himself or herself a prohibited substance, the Board shall order Respondent to
22 cease practice and instruct Respondent to leave any place of work where Respondent is practicing
23 medicine or providing medical services. The Board shall immediately notify all of Respondent's
24 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or
25 provide medical services while the cease-practice order is in effect.

26 A biological fluid test will not be considered negative if a positive result is obtained while
27 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited
28 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

1 After the issuance of a cease-practice order, the Board shall determine whether the positive
2 biological fluid test is in fact evidence of prohibited substance use by consulting with the
3 specimen collector and the laboratory, communicating with the licensee, his or her treating
4 physician(s), other health care provider, or group facilitator, as applicable.

5 For purposes of this condition, the terms "biological fluid testing" and "testing" mean the
6 acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

7 For purposes of this condition, the term "prohibited substance" means an illegal drug, a
8 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by
9 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been
10 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

11 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited
12 substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the
13 Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to
14 any other terms or conditions the Board determines are necessary for public protection or to
15 enhance Respondent's rehabilitation.

16 4. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of
17 the effective date of this Decision, Respondent shall submit to the Board or its designee, for its
18 prior approval, the name of a substance abuse support group which he or she shall attend for the
19 duration of probation. Respondent shall attend substance abuse support group meetings at least
20 once per week, or as ordered by the Board or its designee. Respondent shall pay all substance
21 abuse support group meeting costs.

22 The facilitator of the substance abuse support group meeting shall have a minimum of three
23 (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed
24 or certified by the state or nationally certified organizations. The facilitator shall not have a
25 current or former financial, personal, or business relationship with Respondent within the last five
26 (5) years. Respondent's previous participation in a substance abuse group support meeting led by
27 the same facilitator does not constitute a prohibited current or former financial, personal, or
28 business relationship.

1 The facilitator shall provide a signed document to the Board or its designee showing
2 Respondent's name, the group name, the date and location of the meeting, Respondent's
3 attendance, and Respondent's level of participation and progress. The facilitator shall report any
4 unexcused absence by Respondent from any substance abuse support group meeting to the Board,
5 or its designee, within twenty-four (24) hours of the unexcused absence.

6 5. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty
7 (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or
8 its designee for prior approval as a worksite monitor, the name and qualifications of one or more
9 licensed physician and surgeon, other licensed health care professional if no physician and
10 surgeon is available, or, as approved by the Board or its designee, a person in a position of
11 authority who is capable of monitoring the Respondent at work.

12 The worksite monitor shall not have a current or former financial, personal, or familial
13 relationship with Respondent, or any other relationship that could reasonably be expected to
14 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its
15 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite
16 monitor, this requirement may be waived by the Board or its designee, however, under no
17 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

18 The worksite monitor shall have an active unrestricted license with no disciplinary action
19 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms
20 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth
21 by the Board or its designee.

22 Respondent shall pay all worksite monitoring costs.

23 The worksite monitor shall have face-to-face contact with Respondent in the work
24 environment on as frequent a basis as determined by the Board or its designee, but not less than
25 once per week; interview other staff in the office regarding Respondent's behavior, if requested
26 by the Board or its designee; and review Respondent's work attendance.

27 The worksite monitor shall verbally report any suspected substance abuse to the Board and
28 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected

1 substance abuse does not occur during the Board's normal business hours, the verbal report shall
2 be made to the Board or its designee within one (1) hour of the next business day. A written
3 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
4 any other information deemed important by the worksite monitor shall be submitted to the Board
5 or its designee within 48 hours of the occurrence.

6 The worksite monitor shall complete and submit a written report monthly or as directed by
7 the Board or its designee which shall include the following: (1) Respondent's name and
8 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)
9 the worksite monitor's license number, if applicable; (4) the location or location(s) of the
10 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the
11 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;
12 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can
13 lead to suspected substance abuse by Respondent. Respondent shall complete any required
14 consent forms and execute agreements with the approved worksite monitor and the Board, or its
15 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

16 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)
17 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior
18 approval, the name and qualifications of a replacement monitor who will be assuming that
19 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a
20 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the
21 monitor, Respondent shall receive a notification from the Board or its designee to cease the
22 practice of medicine within three (3) calendar days after being so notified. Respondent shall
23 cease the practice of medicine until a replacement monitor is approved and assumes monitoring
24 responsibility.

25 6. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING
26 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of
27 probation.

28 A. If Respondent commits a major violation of probation as defined by section

1 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take
2 one or more of the following actions:

3 (1) Issue an immediate cease-practice order and order Respondent to undergo a clinical
4 diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of
5 Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice
6 order issued by the Board or its designee shall state that Respondent must test negative for at least
7 a month of continuous biological fluid testing before being allowed to resume practice. For
8 purposes of determining the length of time a Respondent must test negative while undergoing
9 continuous biological fluid testing following issuance of a cease-practice order, a month is
10 defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until
11 notified in writing by the Board or its designee that he or she may do so.

12 (2) Increase the frequency of biological fluid testing.

13 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or
14 other action as determined by the Board or its designee.

15 B. If Respondent commits a minor violation of probation as defined by section
16 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
17 one or more of the following actions:

18 (1) Issue a cease-practice order;

19 (2) Order practice limitations;

20 (3) Order or increase supervision of Respondent;

21 (4) Order increased documentation;

22 (5) Issue a citation and fine, or a warning letter;

23 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in
24 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
25 Regulations, at Respondent's expense;

26 (7) Take any other action as determined by the Board or its designee.

27 C. Nothing in this Decision shall be considered a limitation on the Board's authority
28 to revoke Respondent's probation if he or she has violated any term or condition of probation. If

Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

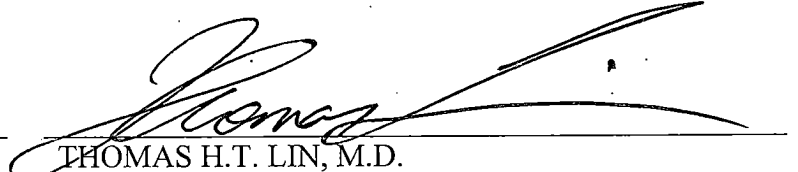
7. PRIOR ORDER STILL IN EFFECT: The intent of this Order is to add additional terms and conditions to the Respondent's current probation terms and conditions as Ordered in the Board's decision in case number 11-2010-209578. Except as provided in footnote 1 herein, nothing herein shall be deemed to change or alter the Board's prior Decision in case number 11-2010-209578.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Tracy Green, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

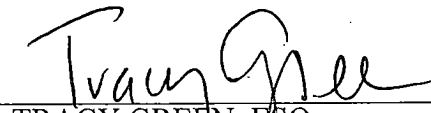
10/16/17


THOMAS H.T. LIN, M.D.
Respondent

I have read and fully discussed with Respondent THOMAS H.T. LIN, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED:

10/16/17


TRACY GREEN, ESQ.
Attorney for Respondent

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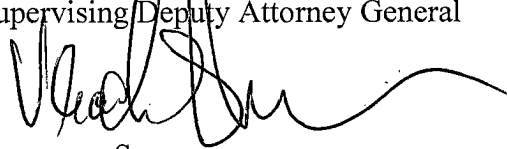
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 10/16/17

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General


VLADIMIR SHALKEVICH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation and Petition to Revoke Probation No. 800-2016-024865

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH
Deputy Attorney General
4 State Bar No. 173955
California Department of Justice
5 300 So. Spring Street, Suite 1702
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6 Telephone: (213) 897-2148
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *November 16, 2016*
EYES *[Signature]* ANALYST

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

13 **Thomas H.T. Lin, M.D.**
14 **725 South Atlantic Blvd., Unit H**
15 **Monterey Park, CA 91754**

16 **Physician's and Surgeon's Certificate**
17 **No. A 64211,**

18 Respondent.

Case No. 800-2016-024865

19 **ACCUSATION AND**
20 **PETITION TO REVOKE**
21 **PROBATION**

22 Complainant alleges:

23 **PARTIES**

24 1. Kimberly Kirchmeyer (Complainant) brings this Accusation and Petition to Revoke
25 Probation solely in her official capacity as the Executive Director of the Medical Board of
26 California, Department of Consumer Affairs (Board).

27 2. On or about December 25, 1997, the Medical Board issued Physician's and Surgeon's
28 Certificate Number A 64211 to Thomas H.T. Lin, M.D. (Respondent). The Physician's and
Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein
and will expire on November 30, 2017, unless renewed.

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1 “(a) The conviction of any offense substantially related to the qualifications, functions, or
2 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
3 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive
4 evidence only of the fact that the conviction occurred.

5 “(b) The district attorney, city attorney, or other prosecuting agency shall notify the
6 Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor
7 immediately upon obtaining information that the defendant is a licensee. The notice shall identify
8 the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall
9 also notify the clerk of the court in which the action is pending that the defendant is a licensee,
10 and the clerk shall record prominently in the file that the defendant holds a license as a physician
11 and surgeon.

12 “(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours
13 after the conviction, transmit a certified copy of the record of conviction to the board. The
14 division may inquire into the circumstances surrounding the commission of a crime in order to fix
15 the degree of discipline or to determine if the conviction is of an offense substantially related to
16 the qualifications, functions, or duties of a physician and surgeon.

17 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
18 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
19 shall be conclusive evidence of the fact that the conviction occurred.”

20 7. Section 2238 of the Code states:

21 “A violation of any federal statute or federal regulation or any of the statutes or regulations
22 of this state regulating dangerous drugs or controlled substances constitutes unprofessional
23 conduct.”

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Conviction of a Crime)**

26 8. Respondent Thomas H.T. Lin, M.D. is subject to disciplinary action under sections
27 2236 in that Respondent was convicted of a crime that is substantially related to the qualifications
28 functions or duties of a physician and surgeon. The circumstances are as follows:

9. On May 1, 2014, at approximately 4:30 a.m., City of Alhambra police officers were called to an address within the City of Alhambra, California. They observed a vehicle impeding traffic, and spoke with a witness who identified Respondent as the driver of that vehicle. The officers knocked on the door of a near-by residence and located Respondent, who denied that he was the driver of the vehicle. The owner of the vehicle could not be located. The police officers ran a warrant check, discovered that Respondent was wanted on an outstanding warrant¹ and arrested Respondent based on that warrant.

10. The traffic-impeding vehicle which Respondent had allegedly driven before, was towed away and impounded. A subsequent inventory of the vehicle uncovered concentrated cannabis² concealed in the vehicle.

11. On or about January 8, 2016, in Superior Court of California for the County of Los Angeles case number 5AH02689 entitled *People of the State of California vs. Thomas Lin*, Respondent was convicted upon a plea of *nolo contendere* of a crime of possession of concentrated cannabis in violation of Health and Safety Code section 11357, subdivision (a), a misdemeanor. Respondent was sentenced on February 23, 2016 to pay fines and spend 364 days in Los Angeles County Jail, said sentence to run concurrent with Respondent's prior sentence for a different conviction in Superior Court of California for the County of Los Angeles, Case Number BA414836.

SECOND CAUSE FOR DISCIPLINE

(Violation of a Statute Regulating Dangerous Drugs or Controlled Substances)

12. Respondent Thomas H.T. Lin, M.D. is subject to disciplinary action under sections 2238 in that Respondent was convicted a violation of Health and Safety Code section 11357,

¹ At this time Respondent was a defendant in another criminal matter, entitled *People vs. Thomas Lin, etc., et al*, Superior Court of California for the County of Los Angeles, Case Number BA414836. The arrest warrant that the officers discovered on May 1, 2014, was issued based on alleged violations of a bail condition in that case, which prohibited Respondent from prescribing or dispensing certain controlled substances.

² Concentrated Cannabis is a Schedule I controlled substance pursuant to Health and Safety Code sections 11006.5 and 11054, subdivision (d) (20).

1 subdivision (a), a statute regulating dangerous drugs or controlled substances. The circumstances
2 are as follows:

3 13. The allegations of paragraphs 9, 10 and 11 are incorporated herein by reference.

4 **CAUSE TO REVOKE PROBATION**

5 **(Conviction of a Crime)**

6 14. At all times after the effective date of Respondent's probation, he was subject to
7 Condition 20, which required that Respondent "shall obey all federal, state and local laws, all
8 rules governing the practice of medicine in California and remain in full compliance with any
9 court ordered criminal probation, payments and other orders."

10 15. Respondent's probation is subject to revocation because he failed to comply with
11 Probation Condition 20, by committing unprofessional conduct as defined by Business and
12 Professions Code section 2236. The circumstances are as follows:

13 16. As alleged in paragraph 11, which is incorporated herein by reference, Respondent
14 was convicted of a crime while on Board ordered probation.

15 **DISCIPLINARY CONSIDERATIONS**

16 17. To determine the degree of discipline, if any, to be imposed on Respondent Thomas
17 H.T. Lin, M.D., Complainant alleges that on or about March 25, 2016, in a prior criminal
18 proceeding entitled *The People of the State of California vs. Thomas Lin, etc. et al.* in Superior
19 Court of California for the County of Los Angeles, Case Number BA414836. Respondent was
20 convicted of submitting a fraudulent claim for Medi-Cal reimbursement in violation of Welfare
21 and Institutions Code section 14107, subdivision (a), and issuing an unlawful prescription in
22 violation of Health and Safety Code section 11153, subdivision (a), both charges being felonies,
23 and was ordered to serve two years in the county jail, followed by two years of criminal probation,
24 was fined and ordered to pay restitution in the amount of \$132,529.58. The record of the
25 criminal proceeding is incorporated as if fully set forth herein.

26 18. To further determine the degree of discipline, if any, to be imposed on Respondent
27 Thomas H.T. Lin, M.D., Complainant alleges that on or about July 13, 2015, in a prior
28 administrative proceeding entitled *In the Matter of the First Amended Accusation Against Thomas*

1 H.T. Lin, M.D. Medical Board of California Case number 11-2010-209578, Respondent's license
2 was revoked, but the revocation was stayed. Respondent was suspended from the practice of
3 medicine for 90 days, and his physician's and surgeon's certificate was placed on 10 years'
4 probation with various terms and conditions. The record of the administrative proceeding is
5 incorporated as if fully set forth herein.

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Medical Board of California issue a decision:

9 1. Revoking the probation that was granted by the Medical Board of California in Case
10 number 11-2010-209578 and imposing the disciplinary order that was stayed, thereby revoking
11 Physician's and Surgeon's Certificate Number A 64211, issued to Thomas H.T. Lin, M.D.;

12 2. Revoking or suspending Physician's and Surgeon's Certificate Number A 64211,
13 issued to Thomas H.T. Lin, M.D.;

14 3. Revoking, suspending or denying approval of Thomas H.T. Lin, M.D.'s authority to
15 supervise physician assistants, pursuant to section 3527 of the Code;

16 4. Ordering Thomas H.T. Lin, M.D., if probation is extended, to pay the Board the costs
17 of probation monitoring; and

18 5. Taking such other and further action as deemed necessary and proper.

19
20 DATED: November 16, 2016


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit 1

Decision and Order of the Medical Board of California

Case No. 11-2010-209578

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended)
Accusation Against:)

THOMAS H.T. LIN, M.D.)

Case No. 11-2010-209578

Physician's and Surgeon's)
Certificate No. A 64211)

Respondent)
_____)

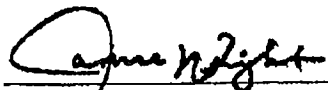
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 12, 2015.

IT IS SO ORDERED: July 13, 2015.

MEDICAL BOARD OF CALIFORNIA



Jamie Wright, J.D., Chair
Panel A

1 KAMALA D. HARRIS
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH
Deputy Attorney General
4 State Bar No: 173955
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 897-2148
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation
Against:

12 **THOMAS H. LIN, M.D.**
13 **790 S. Atlantic Boulevard, #102**
Monterey Park, CA 91754
14 **Physician's and Surgeon's Certificate No. A**
64211

15
16 **Respondent.**

Case No. 11-2010-209578

OAH No. 2014071066
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17
18 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
22 Board of California. She brought this action solely in her official capacity and is represented in
23 this matter by Kamala D. Harris, Attorney General of the State of California, by Vladimir
24 Shalkevich, Deputy Attorney General.

25 2. Respondent THOMAS H. LIN, M.D. ("Respondent") is represented in this
26 proceeding by attorney Tracy Green, whose address is: 800 West 6th Street, Suite 450
27 Los Angeles, CA 90017.

28 **///**

1 3. On or about December 25, 1997, the Medical Board of California issued Physician's
2 and Surgeon's Certificate No. A 64211 to Respondent. The Physician's and Surgeon's Certificate
3 was in full force and effect at all times relevant to the charges brought in First Amended
4 Accusation No. 11-2010-209578 and will expire on November 30, 2013, unless renewed.

5 JURISDICTION

6 4. First Amended Accusation No. 11-2010-209578 was filed before the Medical Board
7 of California (Board), Department of Consumer Affairs, and is currently pending against
8 Respondent. The First Amended Accusation and all other statutorily required documents were
9 properly served on Respondent on or about April 20, 2015. Respondent timely filed his Notice of
10 Defense contesting the First Amended Accusation.

11 5. A copy of First Amended Accusation No. 11-2010-209578 is attached as exhibit A
12 and incorporated herein by reference.

13 ADVISEMENT AND WAIVERS

14 6. Respondent has carefully read, fully discussed with counsel, and understands the
15 charges and allegations in First Amended Accusation No. 11-2010-209578. Respondent has also
16 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
17 Settlement and Disciplinary Order.

18 7. Respondent is fully aware of his legal rights in this matter, including the right to a
19 hearing on the charges and allegations in the First Amended Accusation; the right to be
20 represented by counsel at his own expense; the right to confront and cross-examine the witnesses
21 against him; the right to present evidence and to testify on his own behalf; the right to the
22 issuance of subpoenas to compel the attendance of witnesses and the production of documents;
23 the right to reconsideration and court review of an adverse decision; and all other rights accorded
24 by the California Administrative Procedure Act and other applicable laws.

25 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
26 every right set forth above.

27 ///

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in First
3 Amended Accusation No. 11-2010-209578, if proven at a hearing, constitute cause for imposing
4 discipline upon his Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the First Amended Accusation without the expense and
6 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
7 establish a factual basis for the charges in the First Amended Accusation, and that Respondent
8 hereby gives up his right to contest those charges.

9 11. Respondent agrees that if he ever petitions for early termination or modification of
10 probation, or if the Board ever petitions for revocation of probation, all of the charges and
11 allegations contained in Accusation No. 11-2010-209578 shall be deemed true, correct and
12 fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding
13 involving Respondent in the State of California.

14 12. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
15 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
16 Disciplinary Order below.

17 RESERVATION

18 13. The admissions made by Respondent herein are only for the purposes of this
19 proceeding, or any other proceedings in which the Medical Board of California or other
20 professional licensing agency is involved, and shall not be admissible in any other criminal or
21 civil proceeding.

22 CONTINGENCY

23 14. This stipulation shall be subject to approval by the Medical Board of California.
24 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
25 Board of California may communicate directly with the Board regarding this stipulation and
26 settlement, without notice to or participation by Respondent or his counsel. By signing the
27 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
28 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails

1 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
2 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
3 action between the parties, and the Board shall not be disqualified from further action by having
4 considered this matter.

5 15. The parties understand and agree that Portable Document Format (PDF) and facsimile
6 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
7 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

8 16. In consideration of the foregoing admissions and stipulations, the parties agree that
9 the Board may, without further notice or formal proceeding, issue and enter the following
10 Disciplinary Order:

11 **DISCIPLINARY ORDER**

12 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 64211 issued
13 to Respondent THOMAS H. LIN, M.D. (Respondent) is revoked. However, the revocation is
14 stayed and Respondent is placed on probation for ten (10) years on the following terms and
15 conditions.

16 1. **ACTUAL SUSPENSION.** As part of probation, Respondent is suspended from the
17 practice of medicine for ninety (90) days beginning the sixteenth (16th) day after the effective
18 date of this decision.

19 2. **CONTROLLED SUBSTANCES - TOTAL RESTRICTION.** Respondent shall not
20 order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in
21 the California Uniform Controlled Substances Act.

22 Respondent shall not issue an oral or written recommendation or approval to a patient or a
23 patient's primary caregiver for the possession or cultivation of marijuana for the personal medical
24 purposes of the patient within the meaning of Health and Safety Code section 11362.5.

25 If Respondent forms the medical opinion, after an appropriate prior examination and a
26 medical indication, that a patient's medical condition may benefit from the use of marijuana,
27 Respondent shall so inform the patient and shall refer the patient to another physician who,
28 following an appropriate prior examination and a medical indication, may independently issue a

1 medically appropriate recommendation or approval for the possession or cultivation of marijuana
2 for the personal medical purposes of the patient within the meaning of Health and Safety Code
3 section 11362.5. In addition, Respondent shall inform the patient or the patient's primary
4 caregiver that Respondent is prohibited from issuing a recommendation or approval for the
5 possession or cultivation of marijuana for the personal medical purposes of the patient and that
6 the patient or the patient's primary caregiver may not rely on Respondent's statements to legally
7 possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall
8 fully document in the patient's chart that the patient or the patient's primary caregiver was so
9 informed. Nothing in this condition prohibits Respondent from providing the patient or the
10 patient's primary caregiver information about the possible medical benefits resulting from the use
11 of marijuana.

12 3. CONTROLLED SUBSTANCES - SURRENDER OF DEA PERMIT. Respondent is
13 prohibited from practicing medicine until Respondent provides documentary proof to the Board
14 or its designee that Respondent's DEA permit has been surrendered to the Drug Enforcement
15 Administration for cancellation, together with any state prescription forms and all controlled
16 substances order forms. Thereafter, Respondent shall not reapply for a new DEA permit without
17 the prior written consent of the Board or its designee.

18 4. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain
19 completely from the personal use or possession of controlled substances as defined in the
20 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and
21 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not
22 apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide
23 illness or condition.

24 Within 15 calendar days of receiving any lawfully prescribed medications, Respondent
25 shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone
26 number; medication name, strength, and quantity; and issuing pharmacy name, address, and
27 telephone number.

28 If Respondent has a confirmed positive biological fluid test for any substance (whether or

1 not legally prescribed) and has not reported the use to the Board or its designee, Respondent
2 shall receive a notification from the Board or its designee to immediately cease the practice of
3 medicine. The Respondent shall not resume the practice of medicine until final decision on an
4 First Amended Accusation and/or a petition to revoke probation. An First Amended Accusation
5 and/or petition to revoke probation shall be filed by the Board within 15 days of the notification
6 to cease practice. If the Respondent requests a hearing on the First Amended Accusation and/or
7 petition to revoke probation, the Board shall provide the Respondent with a hearing within 30
8 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be
9 received from the Administrative Law Judge or the Board within 15 days unless good cause can
10 be shown for the delay. The cessation of practice shall not apply to the reduction of the
11 probationary time period.

12 If the Board does not file an First Amended Accusation or petition to revoke probation
13 within 15 days of the issuance of the notification to cease practice or does not provide
14 Respondent with a hearing within 30 days of a such a request, the notification of cease practice
15 shall be dissolved.

16 5. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the
17 use of products or beverages containing alcohol.

18 If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall
19 receive a notification from the Board or its designee to immediately cease the practice of
20 medicine. The Respondent shall not resume the practice of medicine until final decision on an
21 First Amended Accusation and/or a petition to revoke probation. An First Amended Accusation
22 and/or petition to revoke probation shall be filed by the Board within 15 days of the notification
23 to cease practice. If the Respondent requests a hearing on the First Amended Accusation and/or
24 petition to revoke probation, the Board shall provide the Respondent with a hearing within 30
25 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be
26 received from the Administrative Law Judge or the Board within 15 days unless good cause can
27 be shown for the delay. The cessation of practice shall not apply to the reduction of the
28 probationary time period.

1 If the Board does not file an First Amended Accusation or petition to revoke probation
2 within 15 days of the issuance of the notification to cease practice or does not provide
3 Respondent with a hearing within 30 days of a such a request, the notification of cease practice
4 shall be dissolved.

5 6. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
6 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
7 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
8 follicle testing, or similar drug screening approved by the Board or its designee. Prior to
9 practicing medicine, Respondent shall contract with a laboratory or service approved in advance
10 by the Board or its designee that will conduct random, unannounced, observed, biological fluid
11 testing. The contract shall require results of the tests to be transmitted by the laboratory or
12 service directly to the Board or its designee within four hours of the results becoming available.
13 Respondent shall maintain this laboratory or service contract during the period of probation.

14 A certified copy of any laboratory test result may be received in evidence in any
15 proceedings between the Board and Respondent.

16 If Respondent fails to cooperate in a random biological fluid testing program within the
17 specified time frame, Respondent shall receive a notification from the Board or its designee to
18 immediately cease the practice of medicine. The Respondent shall not resume the practice of
19 medicine until final decision on an First Amended Accusation and/or a petition to revoke
20 probation. An First Amended Accusation and/or petition to revoke probation shall be filed by the
21 Board within 15 days of the notification to cease practice. If the Respondent requests a hearing
22 on the First Amended Accusation and/or petition to revoke probation, the Board shall provide the
23 Respondent with a hearing within 30 days of the request, unless the Respondent stipulates to a
24 later hearing. A decision shall be received from the Administrative Law Judge or the Board
25 within 15 days unless good cause can be shown for the delay. The cessation of practice shall not
26 apply to the reduction of the probationary time period.

27 If the Board does not file an First Amended Accusation or petition to revoke probation
28 within 15 days of the issuance of the notification to cease practice or does not provide

Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

7. COMMUNITY SERVICE. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval a community service plan in which Respondent shall within the first 2 years of probation, provide 160 hours of free services to a community or non-profit organization. Respondent's community service shall not include provision or oversight of any medical services. The community service hours must be completed not later than the end of second year of probation.

Prior to engaging in any community service Respondent shall provide a true copy of the Decision(s) to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where Respondent provides community service and shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also apply to any change(s) in community service.

Community service performed prior to the effective date of the Decision shall not be accepted in fulfillment of this condition.

8. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the First Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of

1 the Board or its designee, be accepted towards the fulfillment of this condition if the course would
2 have been approved by the Board or its designee had the course been taken after the effective date
3 of this Decision.

4 Respondent shall submit a certification of successful completion to the Board or its
5 designee not later than 15 calendar days after successfully completing the course, or not later than
6 15 calendar days after the effective date of the Decision, whichever is later.

7 9. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective
8 date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to
9 the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education
10 Program, University of California, San Diego School of Medicine (Program), approved in
11 advance by the Board or its designee. Respondent shall provide the program with any information
12 and documents that the Program may deem pertinent. Respondent shall participate in and
13 successfully complete the classroom component of the course not later than six (6) months after
14 Respondent's initial enrollment. Respondent shall successfully complete any other component of
15 the course within one (1) year of enrollment. The medical record keeping course shall be at
16 Respondent's expense and shall be in addition to the Continuing Medical Education (CME)
17 requirements for renewal of licensure.

18 A medical record keeping course taken after the acts that gave rise to the charges in the
19 First Amended Accusation, but prior to the effective date of the Decision may, in the sole
20 discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the
21 course would have been approved by the Board or its designee had the course been taken after the
22 effective date of this Decision.

23 Respondent shall submit a certification of successful completion to the Board or its
24 designee not later than 15 calendar days after successfully completing the course, or not later than
25 15 calendar days after the effective date of the Decision, whichever is later.

26 10. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
27 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
28 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.

1 Respondent shall participate in and successfully complete that program. Respondent shall
2 provide any information and documents that the program may deem pertinent. Respondent shall
3 successfully complete the classroom component of the program not later than six (6) months after
4 Respondent's initial enrollment, and the longitudinal component of the program not later than the
5 time specified by the program, but no later than one (1) year after attending the classroom
6 component. The professionalism program shall be at Respondent's expense and shall be in
7 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

8 A professionalism program taken after the acts that gave rise to the charges in the First
9 Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of
10 the Board or its designee, be accepted towards the fulfillment of this condition if the program
11 would have been approved by the Board or its designee had the program been taken after the
12 effective date of this Decision.

13 Respondent shall submit a certification of successful completion to the Board or its
14 designee not later than 15 calendar days after successfully completing the program or not later
15 than 15 calendar days after the effective date of the Decision, whichever is later.

16 11. CLINICAL TRAINING PROGRAM. Within 60 calendar days of the effective date
17 of this Decision, Respondent shall enroll in a clinical training or educational program equivalent
18 to the Physician Assessment and Clinical Education Program (PACE) offered at the University of
19 California - San Diego School of Medicine ("Program"). Respondent shall successfully complete
20 the Program not later than six (6) months after Respondent's initial enrollment unless the Board
21 or its designee agrees in writing to an extension of that time.

22 The Program shall consist of a Comprehensive Assessment program comprised of a two-
23 day assessment of Respondent's physical and mental health; basic clinical and communication
24 skills common to all clinicians; and medical knowledge, skill and judgment pertaining to
25 Respondent's area of practice in which Respondent was alleged to be deficient, and at minimum,
26 a 40 hour program of clinical education in the area of practice in which Respondent was alleged
27 to be deficient and which takes into account data obtained from the assessment, Decision(s), First
28 Amended Accusation(s), and any other information that the Board or its designee deems relevant.

1 Respondent shall pay all expenses associated with the clinical training program.

2 Based on Respondent's performance and test results in the assessment and clinical
3 education, the Program will advise the Board or its designee of its recommendation(s) for the
4 scope and length of any additional educational or clinical training, treatment for any medical
5 condition, treatment for any psychological condition, or anything else affecting Respondent's
6 practice of medicine. Respondent shall comply with Program recommendations.

7 At the completion of any additional educational or clinical training, Respondent shall
8 submit to and pass an examination. Determination as to whether Respondent successfully
9 completed the examination or successfully completed the program is solely within the program's
10 jurisdiction.

11 If Respondent fails to enroll, participate in, or successfully complete the clinical training
12 program within the designated time period, Respondent shall receive a notification from the
13 Board or its designee to cease the practice of medicine within three (3) calendar days after being
14 so notified. The Respondent shall not resume the practice of medicine until enrollment or
15 participation in the outstanding portions of the clinical training program have been completed. If
16 the Respondent did not successfully complete the clinical training program, the Respondent shall
17 not resume the practice of medicine until a final decision has been rendered on the First Amended
18 Accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the
19 reduction of the probationary time period.

20 Within 60 days after Respondent has successfully completed the clinical training program,
21 Respondent shall participate in a professional enhancement program equivalent to the one offered
22 by the Physician Assessment and Clinical Education Program at the University of California, San
23 Diego School of Medicine, which shall include quarterly chart review, semi-annual practice
24 assessment, and semi-annual review of professional growth and education. Respondent shall
25 participate in the professional enhancement program at Respondent's expense during the term of
26 probation, or until the Board or its designee determines that further participation is no longer
27 necessary.

28 12. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of

1 this Decision, and on whatever periodic basis thereafter may be required by the Board or its
2 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological
3 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall
4 consider any information provided by the Board or designee and any other information the
5 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its
6 designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not
7 be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all
8 psychiatric evaluations and psychological testing.

9 Respondent shall comply with all restrictions or conditions recommended by the evaluating
10 psychiatrist within 15 calendar days after being notified by the Board or its designee.

11 Respondent shall not engage in the practice of medicine until notified by the Board or its
12 designee that Respondent is mentally fit to practice medicine safely. The period of time that
13 Respondent is not practicing medicine shall not be counted toward completion of the term of
14 probation.

15 13. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision,
16 Respondent shall submit to the Board or its designee for prior approval the name and
17 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who
18 has a doctoral degree in psychology and at least five years of postgraduate experience in the
19 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall
20 undergo and continue psychotherapy treatment, including any modifications to the frequency of
21 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

22 The psychotherapist shall consider any information provided by the Board or its designee
23 and any other information the psychotherapist deems relevant and shall furnish a written
24 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
25 psychotherapist any information and documents that the psychotherapist may deem pertinent.

26 Respondent shall have the treating psychotherapist submit quarterly status reports to the
27 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric
28 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of

1 probation, Respondent is found to be mentally unfit to resume the practice of medicine without
2 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
3 period of probation shall be extended until the Board determines that Respondent is mentally fit
4 to resume the practice of medicine without restrictions.

5 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

6 14. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the
7 effective date of this Decision, and on a periodic basis thereafter as may be required by the Board
8 or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician
9 who shall consider any information provided by the Board or designee and any other information
10 the evaluating physician deems relevant and shall furnish a medical report to the Board or its
11 designee. Respondent shall provide the evaluating physician any information and documentation
12 that the evaluating physician may deem pertinent.

13 Following the evaluation, Respondent shall comply with all restrictions or conditions
14 recommended by the evaluating physician within 15 calendar days after being notified by the
15 Board or its designee. If Respondent is required by the Board or its designee to undergo medical
16 treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the
17 Board or its designee for prior approval the name and qualifications of a California licensed
18 treating physician of Respondent's choice. Upon approval of the treating physician, Respondent
19 shall within 15 calendar days undertake medical treatment and shall continue such treatment until
20 further notice from the Board or its designee.

21 The treating physician shall consider any information provided by the Board or its designee
22 or any other information the treating physician may deem pertinent prior to commencement of
23 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or
24 its designee indicating whether or not the Respondent is capable of practicing medicine safely.
25 Respondent shall provide the Board or its designee with any and all medical records pertaining to
26 treatment, the Board or its designee deems necessary.

27 If, prior to the completion of probation, Respondent is found to be physically incapable of
28 resuming the practice of medicine without restrictions, the Board shall retain continuing

1 jurisdiction over Respondent's license and the period of probation shall be extended until the
2 Board determines that Respondent is physically capable of resuming the practice of medicine
3 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

4 Respondent shall not engage in the practice of medicine until notified in writing by the
5 Board or its designee of its determination that Respondent is medically fit to practice safely.

6 15. MONITORING - PRACTICE/BILLING. Within 30 calendar days of the effective
7 date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a
8 practice and billing monitor(s), the name and qualifications of one or more licensed physicians
9 and surgeons whose licenses are valid and in good standing, and who are preferably American
10 Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current
11 business or personal relationship with Respondent, or other relationship that could reasonably be
12 expected to compromise the ability of the monitor to render fair and unbiased reports to the
13 Board, including but not limited to any form of bartering, shall be in Respondent's field of
14 practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring
15 costs.

16 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
17 and First Amended Accusation(s), and a proposed monitoring plan. Within 15 calendar days of
18 receipt of the Decision(s), First Amended Accusation(s), and proposed monitoring plan, the
19 monitor shall submit a signed statement that the monitor has read the Decision(s) and First
20 Amended Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the
21 proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the
22 monitor shall submit a revised monitoring plan with the signed statement for approval by the
23 Board or its designee.

24 Within 60 calendar days of the effective date of this Decision, and continuing throughout
25 probation, Respondent's practice and billing shall be monitored by the approved monitor.
26 Respondent shall make all records available for immediate inspection and copying on the
27 premises by the monitor at all times during business hours and shall retain the records for the
28 entire term of probation.

1 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
2 date of this Decision, Respondent shall receive a notification from the Board or its designee to
3 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
4 shall cease the practice of medicine until a monitor is approved to provide monitoring
5 responsibility.

6 The monitor(s) shall submit a quarterly written report to the Board or its designee which
7 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
8 are within the standards of practice of medicine and billing, and whether Respondent is practicing
9 medicine safely and billing appropriately. It shall be the sole responsibility of Respondent to
10 ensure that the monitor submits the quarterly written reports to the Board or its designee within
11 10 calendar days after the end of the preceding quarter.

12 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
13 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
14 name and qualifications of a replacement monitor who will be assuming that responsibility within
15 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
16 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
17 notification from the Board or its designee to cease the practice of medicine within three (3)
18 calendar days after being so notified Respondent shall cease the practice of medicine until a
19 replacement monitor is approved and assumes monitoring responsibility.

20 In lieu of a monitor, Respondent may participate in a professional enhancement program
21 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the
22 University of California, San Diego School of Medicine, that includes, at minimum, quarterly
23 chart review, semi-annual practice assessment, and semi-annual review of professional growth
24 and education. Respondent shall participate in the professional enhancement program at
25 Respondent's expense during the term of probation.

26 16. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
27 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice
28 where: 1) Respondent merely shares office space with another physician but is not affiliated for

1 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
2 location.

3 If Respondent fails to establish a practice with another physician or secure employment in
4 an appropriate practice setting within 60 calendar days of the effective date of this Decision,
5 Respondent shall receive a notification from the Board or its designee to cease the practice of
6 medicine within three (3) calendar days after being so notified. The Respondent shall not resume
7 practice until an appropriate practice setting is established.

8 If, during the course of the probation, the Respondent's practice setting changes and the
9 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent
10 shall notify the Board or its designee within 5 calendar days of the practice setting change. If
11 Respondent fails to establish a practice with another physician or secure employment in an
12 appropriate practice setting within 60 calendar days of the practice setting change, Respondent
13 shall receive a notification from the Board or its designee to cease the practice of medicine within
14 three (3) calendar days after being so notified. The Respondent shall not resume practice until an
15 appropriate practice setting is established.

16 17. PROHIBITED PRACTICE. During probation, Respondent is prohibited from
17 participating in any medical practice involving weight loss. After the effective date of this
18 Decision, all weight loss patients being treated by the Respondent shall be notified that the
19 Respondent is prohibited from treating weight loss patients. Any new patients must be provided
20 this notification at the time of their initial appointment.

21 Respondent shall maintain a log of all patients to whom the required oral notification was
22 made. The log shall contain the: 1) patient's name, address and phone number; patient's medical
23 record number, if available; 3) the full name of the person making the notification; 4) the date the
24 notification was made; and 5) a description of the notification given. Respondent shall keep this
25 log in a separate file or ledger, in chronological order, shall make the log available for immediate
26 inspection and copying on the premises at all times during business hours by the Board or its
27 designee, and shall retain the log for the entire term of probation.

28 18. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the

1 Respondent shall provide a true copy of this Decision and First Amended Accusation to the Chief
2 of Staff or the Chief Executive Officer at every hospital where privileges or membership are
3 extended to Respondent, at any other facility where Respondent engages in the practice of
4 medicine, including all physician and locum tenens registries or other similar agencies, and to the
5 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage
6 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within
7 15 calendar days.

8 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

9 19. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
10 prohibited from supervising physician assistants.

11 20. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
12 governing the practice of medicine in California and remain in full compliance with any court
13 ordered criminal probation, payments, and other orders.

14 21. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
15 under penalty of perjury on forms provided by the Board, stating whether there has been
16 compliance with all the conditions of probation.

17 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
18 of the preceding quarter.

19 22. GENERAL PROBATION REQUIREMENTS.

20 Compliance with Probation Unit

21 Respondent shall comply with the Board's probation unit and all terms and conditions of
22 this Decision.

23 Address Changes

24 Respondent shall, at all times, keep the Board informed of Respondent's business and
25 residence addresses, email address (if available), and telephone number. Changes of such
26 addresses shall be immediately communicated in writing to the Board or its designee. Under no
27 circumstances shall a post office box serve as an address of record, except as allowed by Business
28 and Professions Code section 2021(b).

1 Place of Practice

2 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
3 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
4 facility.

5 License Renewal

6 Respondent shall maintain a current and renewed California physician's and surgeon's
7 license.

8 Travel or Residence Outside California

9 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
10 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
11 (30) calendar days.

12 In the event Respondent should leave the State of California to reside or to practice
13 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
14 departure and return.

15 23. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
16 available in person upon request for interviews either at Respondent's place of business or at the
17 probation unit office, with or without prior notice throughout the term of probation.

18 24. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
19 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
20 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
21 defined as any period of time Respondent is not practicing medicine in California as defined in
22 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
23 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
24 time spent in an intensive training program which has been approved by the Board or its designee
25 shall not be considered non-practice. Practicing medicine in another state of the United States or
26 Federal jurisdiction while on probation with the medical licensing authority of that state or
27 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
28 not be considered as a period of non-practice.

1 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
2 months; Respondent shall successfully complete a clinical training program that meets the criteria
3 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
4 Disciplinary Guidelines" prior to resuming the practice of medicine.

5 Respondent's period of non-practice while on probation shall not exceed two (2) years.

6 Periods of non-practice will not apply to the reduction of the probationary term.

7 Periods of non-practice will relieve Respondent of the responsibility to comply with the
8 probationary terms and conditions with the exception of this condition and the following terms
9 and conditions of probation: Obey All Laws; and General Probation Requirements.

10 25. COMPLETION OF PROBATION. Respondent shall comply with all financial
11 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
12 completion of probation. Upon successful completion of probation, Respondent's certificate shall
13 be fully restored.

14 26. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
15 of probation is a violation of probation. If Respondent violates probation in any respect, the
16 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
17 carry out the disciplinary order that was stayed. If an First Amended Accusation, or Petition to
18 Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation,
19 the Board shall have continuing jurisdiction until the matter is final, and the period of probation
20 shall be extended until the matter is final.

21 27. LICENSE SURRENDER. Following the effective date of this Decision, if
22 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
23 the terms and conditions of probation, Respondent may request to surrender his or her license.
24 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
25 determining whether or not to grant the request, or to take any other action deemed appropriate
26 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
27 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
28 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject

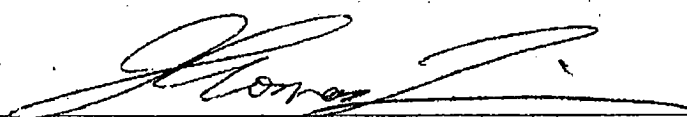
1 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
2 application shall be treated as a petition for reinstatement of a revoked certificate.

3 28. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
4 with probation monitoring each and every year of probation, as designated by the Board, which
5 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
6 California and delivered to the Board or its designee no later than January 31 of each calendar
7 year.

8 ACCEPTANCE

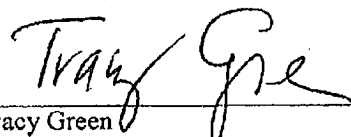
9 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
10 discussed it with my attorney, Tracy Green. I understand the stipulation and the effect it will
11 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
12 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
13 Decision and Order of the Medical Board of California.

14
15 DATED: 5/13/15


16 THOMAS H. LIN, M.D.
Respondent

17 I have read and fully discussed with Respondent THOMAS H. LIN, M.D. the terms and
18 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
19 I approve its form and content.

20 DATED: 5/13/15


21 Tracy Green
Attorney for Respondent

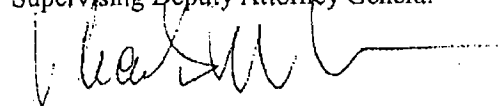
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27
28 ENDORSEMENT

1 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
2 submitted for consideration by the Medical Board of California.

3
4 Dated: 7/14/15

Respectfully submitted,

5 KAMALA D. HARRIS
6 Attorney General of California
7 E. A. JONES III
8 Supervising Deputy Attorney General



9 VLADIMIR SHALKEVICH
10 Deputy Attorney General
11 *Attorneys for Complainant*

12 LA2013610237
13 61546903.doc

Exhibit A

First Amended Accusation No. 11-2010-209578

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 30, 2015
BY [Signature] ANALYST

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Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation
Against:

Case No. 11-2010-209578

12 **THOMAS H. LIN, M.D.**
13 **725 S. Atlantic Boulevard, Unit H**
14 **Monterey Park, CA 91754**

OAH Case No. 2014071066

15 **Physician's and Surgeon's Certificate**
16 **No. A 64211**

FIRST AMENDED
ACCUSATION

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

- 20 1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation
21 solely in her official capacity as the Executive Director of the Medical Board of California,
22 Department of Consumer Affairs.
23 2. On or about December 25, 1997, the Medical Board of California issued
24 Physician's and Surgeon's Certificate Number A 64211 to THOMAS H. LIN, M.D. (Respondent).
25 The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on November 30, 2015, unless renewed.

27 ///

28

JURISDICTION

3. This First Amended Accusation is brought before the Medical Board of California (Board). Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

1 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter.

3 "(b) Gross negligence.

4 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
5 omissions. An initial negligent act or omission followed by a separate and distinct departure from
6 the applicable standard of care shall constitute repeated negligent acts.

7 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate
8 for that negligent diagnosis of the patient shall constitute a single negligent act.

9 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
10 constitutes the negligent act described in paragraph (1), including, but not limited to, a
11 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
12 applicable standard of care, each departure constitutes a separate and distinct breach of the
13 standard of care.

14 "(d) Incompetence.

15 "(e) The commission of any act involving dishonesty or corruption which is substantially
16 related to the qualifications, functions, or duties of a physician and surgeon.

17 "(f) Any action or conduct which would have warranted the denial of a certificate.

18 "(g) The practice of medicine from this state into another state or country without meeting
19 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
20 apply to this subdivision. This subdivision shall become operative upon the implementation of the
21 proposed registration program described in Section 2052.5.

22 "(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
23 participate in an interview by the board. This subdivision shall only apply to a certificate holder
24 who is the subject of an investigation by the board."

25 6. Section 2238 of the Code states:

26 "A violation of any federal statute or federal regulation or any of the statutes or regulations
27 of this state regulating dangerous drugs or controlled substances constitutes unprofessional
28 conduct."

1 7. Section 2239 of the Code states, in pertinent part:

2 “(a) The use or prescribing for or administering to himself or herself, of any controlled
3 substance: or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
4 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
5 any other person or to the public, or to the extent that such use impairs the ability of the licensee
6 to practice medicine safely or more than one misdemeanor or any felony involving the use,
7 consumption, or self-administration of any of the substances referred to in this section, or any
8 combination thereof, constitutes unprofessional conduct. The record of the conviction is
9 conclusive evidence of such unprofessional conduct.”

10 8. Health and Safety Code section 11170 states:

11 “No person shall prescribe, administer, or furnish a controlled substance for himself.”

12 9. Health and Safety Code section 11155 states:

13 “Any physician, who by court order or order of any state or governmental agency, or who
14 voluntarily surrenders his controlled substance privileges, shall not possess, administer, dispense,
15 or prescribe a controlled substance unless and until such privileges have been restored, and he has
16 obtained current registration from the appropriate federal agency as provided by law.”

17 10. Section 2242 of the Code states:

18 “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022
19 without an appropriate prior examination and a medical indication, constitutes unprofessional
20 conduct.

21 “(b) No licensee shall be found to have committed unprofessional conduct within the
22 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of
23 the following applies:

24 “(1) The licensee was a designated physician and surgeon or podiatrist serving in the
25 absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs
26 were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return
27 of his or her practitioner, but in any case no longer than 72 hours.

28 ///

1 "(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed
2 vocational nurse in an inpatient facility, and if both of the following conditions exist:

3 "(A) The practitioner had consulted with the registered nurse or licensed vocational nurse
4 who had reviewed the patient's records.

5 "(B) The practitioner was designated as the practitioner to serve in the absence of the
6 patient's physician and surgeon or podiatrist, as the case may be.

7 "(3) The licensee was a designated practitioner serving in the absence of the patient's
8 physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized
9 the patient's records and ordered the renewal of a medically indicated prescription for an amount
10 not exceeding the original prescription in strength or amount or for more than one refill.

11 "(4) The licensee was acting in accordance with Section 120582 of the Health and Safety
12 Code."

13 11. Section 3501 of the Code states, in pertinent part:

14 "(a) as used in this chapter:

15 "(4) 'Physician assistant' means a person who meets the requirements of this chapter and is
16 licensed by the board.

17 "(5) 'Supervising physician' means a physician and surgeon licensed by the Medical Board
18 of California or by the Osteopathic Medical Board of California who supervises one or more
19 physician assistants, who possesses a current valid license to practice medicine, and who is not
20 currently on disciplinary probation for improper use of a physician assistant.

21 "(6) 'Supervision' means that a licensed physician and surgeon oversees the activities of,
22 and accepts responsibility for, the medical services rendered by a physician assistant."

23 12. Section 4170 of the Code, states:

24 "(a) No prescriber shall dispense drugs or dangerous devices to patients in his or her office
25 or place of practice unless all of the following conditions are met:

26 "(1) The dangerous drugs or dangerous devices are dispensed to the prescriber's own
27 patient, and the drugs or dangerous devices are not furnished by a nurse or physician attendant.

28 ///

1 “(2) The dangerous drugs or dangerous devices are necessary in the treatment of the
2 condition for which the prescriber is attending the patient.

3 “(3) The prescriber does not keep a pharmacy, open shop, or drugstore, advertised or
4 otherwise, for the retailing of dangerous drugs, dangerous devices, or poisons.

5 “(4) The prescriber fulfills all the labeling requirements imposed upon pharmacists by
6 Section 4076, all of the recordkeeping requirements of this chapter, and all of the packaging
7 requirements of good pharmaceutical practice, including the use of childproof containers.

8 “(5) The prescriber does not use a dispensing device unless he or she personally owns the
9 device and the contents of the device, and personally dispenses the dangerous drugs or dangerous
10 devices to the patient packaged, labeled, and recorded in accordance with paragraph (4).

11 “(6) The prescriber, prior to dispensing, offers to give a written prescription to the patient
12 that the patient may elect to have filled by the prescriber or by any pharmacy.

13 “(7) The prescriber, prior to dispensing, offers to give a written prescription to the patient
14 that the patient may elect to have filled by the prescriber or by any pharmacy.

15 “(8) A certified nurse-midwife who functions pursuant to a standardized procedure or
16 protocol described in Section 2746.51, a nurse practitioner who functions pursuant to a
17 standardized procedure described in Section 2836.1, or protocol, a physician assistant who
18 functions pursuant to Section 3502.1, or a naturopathic doctor who functions pursuant to Section
19 3640.5, may hand to a patient of the supervising physician and surgeon a properly labeled
20 prescription drug prepackaged by a physician and surgeon, a manufacturer as defined in this
21 chapter, or a pharmacist.

22 “(b) The Medical Board of California, the State Board of Optometry, the Bureau of
23 Naturopathic Medicine, the Dental Board of California, the Osteopathic Medical Board of
24 California, the Board of Registered Nursing, the Veterinary Medical Board, and the Physician
25 Assistant Committee shall have authority with the California State Board of Pharmacy to ensure
26 compliance with this section, and those boards are specifically charged with the enforcement of
27 this chapter with respect to their respective licensees.

28

1 “(c) ‘Prescriber,’ as used in this section, means a person, who holds a physician’s and
2 surgeon’s certificate, a license to practice optometry, a license to practice naturopathic medicine,
3 a license to practice dentistry, a license to practice veterinary medicine, or a certificate to practice
4 podiatry, and who is duly registered by the Medical Board of California, the State Board of
5 Optometry, the Bureau of Naturopathic Medicine, the Dental Board of California, the Veterinary
6 Medical Board, or the Board of Osteopathic Examiners of this state.”

7 13. Section 4172 of the Code, states:

8 “A prescriber who dispenses drugs pursuant to Section 4170 shall store all drugs to be
9 dispensed in an area that is secure. The Medical Board of California shall, by regulation, define
10 the term ‘secure’ for purposes of this section.”

11 14. California Code of Regulations Title 16, Division 13, Chapter 2, Article 1,
12 Section 1356.3, states:

13 “For purposes of section 4172 of the code, the phrase ‘area which is secure’ means a locked
14 storage area within a physician’s office. The area shall be secure at all times. The keys to the
15 locked storage area shall be available only to staff authorized by the physician to have access
16 thereto.”

17 15. Section 2261 of the Code states:

18 “Knowingly making or signing any certificate or other document directly or indirectly
19 related to the practice of medicine or podiatry which falsely represents the existence or
20 nonexistence of a state of facts, constitutes unprofessional conduct.”

21 16. Section 2262 of the Code states:

22 “Altering or modifying the medical record of any person, with fraudulent intent, or creating
23 any false medical record, with fraudulent intent, constitutes unprofessional conduct.

24 “In addition to any other disciplinary action, the Division of Medical Quality¹ or the
25 California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars (\$500)
26 for a violation of this section.”

27 ¹ Business and Professions Code section 2002, as amended and effective January 1, 2008,
28 provides that, unless otherwise expressly provided, the term “board” as used in the State Medical
(continued...)

1 17. Section 2266 of the Code states:

2 "The failure of a physician and surgeon to maintain adequate and accurate records relating
3 to the provision of services to their patients constitutes unprofessional conduct."

4 18. Section 810 of the Code states:

5 "(a) It shall constitute unprofessional conduct and grounds for disciplinary action,
6 including suspension or revocation of a license or certificate, for a health care professional to do
7 any of the following in connection with his or her professional activities:

8 "(1) Knowingly present or cause to be presented any false or fraudulent claim
9 for the payment of a loss under a contract of insurance.

10 "(2) Knowingly prepare, make, or subscribe any writing, with intent to present
11 or use the same, or to allow it to be presented or used in support of any false or
12 fraudulent claim.

13 "(b) It shall constitute cause for revocation or suspension of a license or certificate for a
14 health care professional to engage in any conduct prohibited under Section 1871.4 of the
15 Insurance Code or Section 549 or 550 of the Penal Code.

16 "(c) (1) It shall constitute cause for automatic suspension of a license or certificate issued
17 pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section
18 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section
19 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the
20 Osteopathic Act, if a licensee or certificate holder has been convicted of any felony involving
21 fraud committed by the licensee or certificate holder in conjunction with providing benefits
22 covered by worker's compensation insurance, or has been convicted of any felony involving
23 Medi-Cal fraud committed by the licensee or certificate holder in conjunction with the Medi-Cal
24 program, including the Denti-Cal element of the Medi-Cal program, pursuant to Chapter 7
25 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of

26 (...continued)

27 Practice Act (Bus. & Prof. Code § 2000, et seq.) means the Medical Board of California, and
28 references to the Division of Medical Quality and Division of Licensing in the Act or any other
provision of law shall be deemed to refer to the Board.

1 Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to
2 determine whether or not the license or certificate shall be suspended, revoked, or some other
3 disposition shall be considered, including, but not limited to, revocation with the opportunity to
4 petition for reinstatement, suspension, or other limitations on the license or certificate as the
5 board deems appropriate.

6 "(2) It shall constitute cause for automatic suspension and for revocation of a license
7 or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5
8 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7
9 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or
10 pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder
11 has more than one conviction of any felony arising out of separate prosecutions involving
12 fraud committed by the licensee or certificate holder in conjunction with providing benefits
13 covered by worker's compensation insurance, or in conjunction with the Medi-Cal program,
14 including the Denti-Cal element of the Medi-Cal program pursuant to Chapter 7
15 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part
16 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary
17 hearing to revoke the license or certificate and an order of revocation shall be issued unless
18 the board finds mitigating circumstances to order some other disposition.

19 "(3) It is the intent of the Legislature that paragraph (2) apply to a licensee or
20 certificate holder who has one or more convictions prior to January 1, 2004, as provided in
21 this subdivision.

22 "(4) Nothing in this subdivision shall preclude a board from suspending or revoking a
23 license or certificate pursuant to any other provision of law.

24 "(5) "Board," as used in this subdivision, means the Dental Board of California, the
25 Medical Board of California, the Board of Psychology, the State Board of Optometry, the
26 California State Board of Pharmacy, the Osteopathic Medical Board of California, and the
27 State Board of Chiropractic Examiners.

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1 “(6) “More than one conviction,” as used in this subdivision, means that the licensee
2 or certificate holder has one or more convictions prior to January 1, 2004, and at least one
3 conviction on or after that date, or the licensee or certificate holder has two or more
4 convictions on or after January 1, 2004. However, a licensee or certificate holder who has
5 one or more convictions prior to January 1, 2004, but who has no convictions and is
6 currently licensed or holds a certificate after that date, does not have “more than one
7 conviction” for the purposes of this subdivision.

8 “(d) As used in this section, health care professional means any person licensed or certified
9 pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the
10 Chiropractic Initiative Act.”

11 19. Section 2271 of the Code states:

12 “Any advertising in violation of Section 17500, relating to false or misleading advertising,
13 constitutes unprofessional conduct.”

14 20. Section 17500 of the Code states, in pertinent part:

15 “‘It is unlawful for any person, firm, corporation or association, or any employee thereof
16 with intent ... to perform services, professional or otherwise, ... to make or disseminate or cause
17 to be made or disseminated before the public in this state, ... in any newspaper or other
18 publication, ... any statement, concerning ... those services, professional or otherwise, or
19 concerning any circumstance or matter of fact connected with the proposed performance or
20 disposition thereof, which is untrue or misleading, and which is known, or which by the exercise
21 of reasonable care should be known, to be untrue or misleading, or for any person, firm, or
22 corporation to so make or disseminate or cause to be so made or disseminated any such statement
23 as part of a plan or scheme with the intent not to sell... those services, professional or otherwise,
24 so advertised at the price stated therein, or as so advertised...”

25 **FACTUAL ALLEGATIONS**

26 21. Medi-Cal is a government program that pays the cost of essential medical care
27 for California’s qualifying poor. Medi-Cal is jointly funded by the state and federal governments
28 and administered by the California Department of Health Care Services (DHCS). Independent

1 health care providers, who voluntarily enroll as Medi-Cal providers, render Medi-Cal's health
2 care services. DHCS assigns unique identification numbers to Medi-Cal providers upon their
3 acceptance into the program. In 1996, the California Legislature added a family planning
4 component to Medi-Cal, by enacting Welfare and Institutions Code sections 14500 et seq. which
5 created the Office of Family Planning to administer the Family Planning, Access, Care and
6 Treatment program, commonly referred to as the "Family PACT program." In creating the
7 Family PACT program, the Legislature intended "an effective means to improve reproductive
8 health by disease prevention and treatment, to reduce the incidence of unintended pregnancies,
9 and to reduce the demand for abortions." The family planning services that are rendered to
10 qualifying patients by the enrolled medical providers under the Family PACT program are billed
11 directly to Medi-Cal under the provider's unique identification number. To qualify for the Family
12 PACT program, the patient's income must be less than 200% of the federal poverty level. As
13 access to immediate services is one of the core goals of the program, it features immediate on-site
14 enrollment. This means that eligibility is determined on-site by the provider, during the first
15 clinical visit giving the patient immediate access to care. Each eligible patient should be provided
16 a green Health Access Program (HAP) card to use at any Family PACT provider. Because the
17 program operates on presumption of eligibility based on patient and provider-given information,
18 claims are quickly reimbursed on the assumption that the provider verified the patients eligibility
19 and did in fact provide the services in the claim. Because it is strictly a family planning benefit,
20 Family PACT program does not reimburse providers for rendering weight loss treatment, or any
21 other care that is not related to family planning. At all times relevant hereto, Respondent, whose
22 primary medical practice is in pediatrics, was an enrolled provider in Medi-Cal, and was issued a
23 unique identification number which he used to bill Medi-Cal.

24 22. On or about August 17, 2010, a Monterey Park police officer stopped a
25 suspicious vehicle driven by Ricardo Chavarria. In the vehicle, the officer found a small pill
26 bottle with no labels or markings of any kind. Inside there were approximately fifteen pills of
27 three different types. The officer also found a plain white envelope with the same contents.
28 Chavarria told the police officer that he was employed by Respondent, and that his job was to

1 pick up and drop off potential patients for Respondent's weight loss clinic, where the patients
2 received free diet pills for the first week of weight loss treatment. Chavarria told the officer that
3 if the patients like, they can return and pay \$25.00 for a week's supply of diet pills thereafter.
4 Chavarria stated that he received \$20 per pick up and drop off. The officer ascertained the
5 location of Respondent's clinic as 790 S. Atlantic Blvd, #102, Monterey Park, California. This
6 information was later forwarded to the Medical Board of California ("MBC").

7 23. On or about October 13, 2011, MBC Supervising Investigator Laura Gardhouse
8 (Gardhouse hereafter) and Investigator Castro attempted to visit Respondent's clinic, located at
9 790 S. Atlantic Boulevard, #102, Monterey Park, California. Upon arriving, the investigators
10 were told the office was closed for lunch and Respondent didn't see patients on Thursdays.
11 Investigator Castro called the clinic later that day to ascertain more information about the clinic.
12 She was told by employee "Elizabeth" that the first doctor's visit was free and that she would get
13 seven days worth of pills for free. If she was happy with the results, she could return for another
14 week's worth of pills for \$25.

15 24. On or about March 14, 2012, Gardhouse visited Respondent's clinic in an
16 undercover capacity, posing as a potential patient.² Gardhouse spoke to a front desk employee
17 who identified herself as "Maribel." Maribel told Gardhouse that the clinic was out of pills but
18 would receive some later that day. Gardhouse returned to the clinic several hours later, but was
19 told that the clinic still did not have pills available. Maribel explained that the weight loss clinic
20 would give patients three medications for a one week trial period. Afterwards, patients could
21 purchase a one week supply for \$25 or four weeks for \$100 with a fifth week free. She also
22 stated to Gardhouse that there were no tests or physical exams, they will just check her heart
23 beat and blood pressure and dispense the medication. Maribel wrote down the list of weight loss

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25 ///

26 ///

27 ² For officer safety, only the initials of the patient names used by the undercover officers
28 during the investigation will be referred to herein.

1 medications that Gardhouse would receive: Phentermine³ 37.5mg; Furosemide⁴ 40mg; and
2 Chromium Picolinate⁵ 200 mcg. Maribel told Gardhouse that the nurse could dispense these
3 medications to Gardhouse without Respondent present.

4 25. On or about March 15, 2012, Investigator Mercedes Lescaille (Lescaille)
5 visited Respondent's clinic in an undercover capacity, posing as a potential patient. Her
6 interactions with Respondent and his staff were recorded. Lescaille was given the new patient
7 paperwork and was told by the clinic that they had already run out of diet pills. While inside the
8 clinic Lescaille was approached by Ricardo Chavarria who informed her that he worked at the
9 clinic. Chavarria told Lescaille to tell Respondent she knows "Ricky" or that she is one of
10 "Ricky's patients." He also offered to bring the pills to Lescaille and gave her his phone number.

11 26. On or about April 12, 2012, Gardhouse and Lescaille returned to Respondent's
12 clinic in undercover capacity, as patients seeking weight loss treatment. These investigators'
13 interactions with Respondent and his staff were recorded. At the entrance of the 790 S. Atlantic
14 Boulevard, #102, Monterey Park clinic was a note indicating Respondent's office had moved to
15 another suite across the street, 725 South Atlantic Boulevard, Unit H, Monterey Park. The
16 investigators walked to the new address across the street and were given new patient paperwork
17 to complete. The new patient paperwork included a "Family PACT Program Client Eligibility
18 Certification" form, and a "Family Planning Patient Rights," documents that are necessary to
19 complete in order to apply for Family PACT program benefits.

20 27. Gardhouse did not complete the Family PACT form initially, but she was then
21 told by the clinic staff that she would need to complete the form before Respondent would see
22 her. Gardhouse completed the Family PACT form using her undercover patient identity, L.K.,

23
24 ³ Phentermine, phenyl-tertiary-butylamine, is a stimulant with effects similar to
25 amphetamine, used medically as an appetite suppressant. It is a dangerous drug as defined by
Business and Professions Code section 4022, and a Schedule IV controlled substance as defined
by Health and Safety Code section 11057, subdivision (f) (4).

26 ⁴ Furosemide, also known as the active ingredient in LASIX ®, is a prescription diuretic
27 and a dangerous drug pursuant to Business and Professions Code section 4022.

28 ⁵ Chromium Picolinate is an over-the-counter nutritional supplement.

1 and was then weighed and had her blood pressure taken by Respondent's staff. Then she was
2 taken to an exam room where Respondent touched her neck area, listened to her heart with a
3 stethoscope, and looked inside her mouth. Respondent discussed diet and exercise with her. No
4 follow-up with Respondent or any other medical provider, was scheduled. L.K.'s medical records
5 did not reflect any recommendation of a weight loss program or dispensation of weight loss
6 medication. Instead, the medical records from this visit inaccurately reflected counseling and/or
7 provision of contraceptives and family planning counseling to this patient. The examination and
8 discussion with the patient, including information pertaining to informed consent by the patient,
9 was not documented.

10 28. Following Respondent's cursory examination, Gardhouse returned to the front
11 counter, where she was handed a clear plastic bag containing pills by one of the female staff. The
12 bag contained 18 pills with a label: "UCLA Weight Loss Center" and "Rx Instructions: Take one
13 speckled blue pill, one large round pill, and ½ small pill with food every morning." No other
14 information about the medication was provided on the label.

15 29. Subsequent investigation and research identified the medications that were
16 dispensed to Gardhouse at Respondent's clinic on April 12, 2012, as follows: the clear plastic bag
17 contained seven Phentermine hydrochloride 37.5mg pills, seven Chromium Picolinate pills, and
18 four Furosemide pills.

19 30. On the same day, April 12, 2012, Lescaille also submitted new patient
20 paperwork required by Respondent's clinic, including the Family PACT forms, to the front
21 counter using her undercover identity, C.P. Respondent then briefly examined Lescaille's neck,
22 listened to her heart, and looked in her mouth. Respondent discussed diet and exercise with her.
23 No follow-up with Respondent or any other medical provider was scheduled. The examination
24 and discussion with the patient, including information pertaining to informed consent by the
25 patient, was not documented. C.P.'s medical records did not reflect any recommendation of a
26 weight loss program or dispensation of weight loss medication. Instead, the medical records from
27 this visit inaccurately reflected counseling and/or provision of contraceptives and family planning
28 counseling to this patient.

1 After Respondent's cursory examination and a brief discussion, Lescaille returned to the
2 front counter where she was provided a clear plastic bag containing 18 pills with a label: "UCLA
3 Weight Loss Center" and "Rx Instructions: Take one speckled blue pill, one large round pill, and
4 ½ small pill with food every morning." No other information about the medication was provided
5 on the label.

6 31. The medications that were dispensed to Lescaille at Respondent's clinic on
7 April 12, 2012, were as follows: the clear plastic bag contained seven Phentermine hydrochloride
8 37.5mg pills, seven Chromium Picolinate pills, and four Furosemide pills.

9 32. On or about September 6, 2012, Lescaille returned to Respondent's Monterey
10 Park clinic in her undercover capacity. She brought Monterey Park Police Detective Guevara,
11 who posed as a patient with initials C.R. Both Lescaille's and Guevara's office visits were
12 recorded. Investigator Lescaille, using her undercover identity as C.P., paid \$25.00 to the front
13 desk and received a week's supply of diet pills. She was not examined and no inquiry into her
14 medication compliance or effectiveness of the medication was made, and no prescription was
15 issued to her. For referring C.R. to Respondent's clinic, Lescaille received a \$10 credit for her
16 next diet pill purchase. The diet pills were dispensed to Lescaille by a female member of
17 Respondent's staff at the front desk. The pills were packaged in a pharmacy pill bottle with the
18 number "55" written on the cap. There was no label or any other identifying information of any
19 kind on or in the bottle. The pills dispensed to Lescaille on or about September 6, 2012 were
20 seven Phentermine hydrochloride 37.5mg pills, seven Chromium Picolinate pills, and four
21 Furosemide pills.

22 33. On or about September 6, 2012, Monterey Park Police Detective Guevara,
23 posing as patient C.R. in an undercover capacity, was required by the Respondent's office staff to
24 complete the new patient paperwork given to her at the clinic, including the Family PACT forms.
25 Her history, including a history of a hysterectomy and high blood pressure, was taken by a
26 member of Respondent's staff. Thereafter she was seen by Respondent's Physician Assistant,
27 Nobel Lin. Nobel Lin checked her eyes, mouth, and neck and listened to her heart and lungs. He
28 explained the type of diet pills she was going to take and possible side effects. No follow-up with

1 Respondent or any other medical provider was scheduled. The examination and discussion with
2 the patient, including information pertaining to informed consent by the patient, was not
3 documented. C.R.'s medical records did not reflect any examination or recommendation of a
4 weight loss program. Instead, the medical records from this visit inaccurately reflected
5 counseling and/or provision of contraceptives and family planning counseling to this patient.
6 After a cursory examination and discussion of medications, Guevara was then taken to the front
7 counter where she received a bottle of pills with the label, "UCLA Weight Loss Center," with
8 Respondent's former address and "Rx Instructions: Take one speckled blue pill, one large round
9 pill, and ½ small pill with food every morning." No other information was provided with these
10 medications. The medications dispensed to Guevara consisted of Phentermine, Furosemide and
11 Chromium Picolinate.

12 34. On or about October 4, 2012, Lescaille contacted Chavarria by the cell phone
13 number that he had given her during her prior visit, to arrange a purchase of additional pills. She
14 met Chavarria on or about October 11, 2012, in front of a condominium complex located at 1725
15 S. San Gabriel Boulevard, San Gabriel, California. During this meeting, Chavarria provided to
16 Lescaille five bottles of diet pills in exchange for \$100.00. Lescaille asked if Chavarria had more
17 pills she could buy. Chavarria left the area and returned approximately ten to fifteen minutes later
18 and provided Lescaille with five more bottles of diet pills in exchange for an additional \$100.00.
19 Each bottle provided to Lescaille was a pharmacy pill bottle with a white cap. Each bottle had a
20 handwritten number on top, and were numbered 54, 55, 56, 102, 103, 104, 110, 112, 113, and
21 116. There was no label or other identifying information of any kind on or in any of the bottles.

22 35. On or about October 15, 2012, Lescaille returned to Respondent's Monterey
23 Park clinic in her undercover capacity. She brought with her Medical Board Investigator Caroline
24 Montgomery, who posed as a new patient referred by Lescaille. Montgomery was required by
25 Respondent's office staff to complete a packet of new patient forms, including the Family PACT
26 forms, using the undercover identity M.M. She was then examined by Respondent's Physician
27 Assistant, Nobel Lin. Nobel Lin performed a cursory examination of her ears, throat, and heart,
28 and then explained the diet program. He also stated to Montgomery that if she brought a new

1 client to the clinic, she would receive \$10.00 off diet pills immediately. No follow-up with
2 Respondent or any other medical provider was scheduled. The examination and discussion with
3 the patient, including information pertaining to informed consent by the patient, was not
4 documented. M.M.'s medical records did not reflect any recommendation of a weight loss
5 program or dispensation of weight loss medication. Instead, the medical records from this visit
6 inaccurately reflected counseling and/or provision of contraceptives and family planning
7 counseling to this patient. Investigator Montgomery then went to the front counter where the
8 medical assistant opened an unlocked drawer and pulled out a pill bottle with a week's supply of
9 diet pills. Montgomery observed that the drawer was set up with dividers and prepared bottles
10 inside. These bottles had numbers hand-written on the cap.

11 36. Lescaille asked the female staff at the front counter for a month's supply of the
12 diet pills. This was after Lescaille had purchased a two and a half month supply of the pills four
13 days earlier. She was not asked when she last received pills. A staff member in green scrubs
14 mentioned that they had run out of the prepared diet pill bottles and were running out of empty
15 bottles. She then proceeded to prepare three empty bottles, placing the diet pills inside. She
16 provided two bottles with two week's worth of diet pills (36 pills each, including Phentermine,
17 Furosemide and Chromium Picolinate), and one bottle with one week worth of diet pills (18 pills,
18 including Phentermine, Furosemide and Chromium Picolinate). The bottles were numbered 54,
19 55, and 56 handwritten on white caps. Lescaille received a \$10.00 discount for the referral of
20 M.M. (Investigator Montgomery) and paid \$90 total. Then two staff members began discussing
21 what number would start the next batch of pill bottles.

22 37. On or about December 5, 2012, at 10:00 a.m., Investigator Lescaille conducted
23 another drug buy from Chavarria at 1725 S. San Gabriel Boulevard. Chavarria drove up to the
24 location in a white Kia with no plates. He provided five bottles of diet pills to Investigator
25 Lescaille for \$100.00. The bottles were pharmacy bottles that were numbered 11, 12, 18, 20, and
26 25 handwritten on white caps. There were no labels or other identifying information of any kind
27 on the bottles.

28 ///

1 38. On or about September 5, 2012, Respondent placed, or caused to be placed an
2 advertisement into a Spanish-language publication called "Classificado." The advertisement
3 offered a weight loss program with a free initial consultation and first week of the program, and
4 \$25.00 per week thereafter. The advertisement promised "guaranteed results." The
5 advertisement was false and misleading in that it did not disclose the fact that weight loss patients
6 would be required to enroll in the Family PACT program, or that Medi-Cal would be billed for
7 any services rendered to them.

8 39. On or about January 24, 2013, at approximately 9:15 a.m., a search warrant was
9 served on Respondent's Monterey Park clinic. During the warrant service, evidence collectors
10 found numerous manufacturer/wholesale bottles of Phentermine and observed and collected
11 numerous other containers of drugs at the front office desk in an unlocked drawer. Included in
12 the front office desk unlocked drawer were packaging supplies for packaging the medications for
13 sale.

14 40. During service of the search warrant on or about January 24, 2013,
15 Respondent's medical and billing records for undercover Medical Board Investigators, posing as
16 patients L.K. (Guardhouse), C.P. (Lescaille), C.R. (Guevara) and M.M. (Montgomery) were
17 located and seized from Respondent's clinic. The medical records and billing for each of these
18 patients contained Family PACT Progress Notes that falsely represented that each of these
19 patients provided a complete sexual and OB/GYN history, a complete physical exam, and patient
20 education relating to family planning, and that an assessment and plan pertaining to family
21 planning was created for each of these patients.

22 41. From January 1, 2010 through November 30, 2012, Respondent's office
23 submitted 4,124 Family PACT program claims and was paid by Medi-Cal for Family PACT
24 program services in the amount of \$176,706.11.

25 42. The payments made to Respondent included Family PACT Program payment
26 for services rendered to patient L.K. (Gardhouse) for a visit on April 12, 2012, in the amount of
27 \$109.19 and \$12.72. Respondent billed Medi-Cal for evaluation and providing barriers and
28 spermicide to L.K., as well as for providing family planning counseling to her. This billing was

1 fraudulent, and represents a violation of Code sections 810 and 2234, subdivision (e), as
2 Gardhouse was not provided any family planning services or education/counseling by Respondent
3 or his staff during that April 12, 2012, visit, or at any other time.

4 43. Respondent also was paid by Medi-Cal for Family PACT program services
5 rendered to C.P. (Lescaille) during her visit to Respondent's clinic on April 12, 2012.
6 Respondent billed Medi-Cal for evaluation and providing barriers and spermicide to C.P., as well
7 as for providing family planning education/counseling to her. Respondent was paid \$109.19 and
8 \$12.72 for that visit. This billing was fraudulent, and represents a violation of Code sections 810
9 and 2234, subdivision (e), as Lescaille was not provided family planning services or
10 education/counseling by Respondent or his staff during that April 12, 2012, visit, or at any other
11 time.

12 44. Respondent also was paid by Medi-Cal for Family PACT program services
13 rendered to C.R. (Guevara) for a visit on September 6, 2012. Respondent billed Medi-Cal for
14 providing an evaluation and oral contraceptives, as well as family planning and counseling to
15 C.R. Respondent was paid \$109.19 and \$12.72 for that visit. This billing was fraudulent, and
16 represents a violation of Code sections 810 and 2234, subdivision (e), as Guevara was not
17 provided contraceptives or family planning services or education/counseling by Respondent or his
18 staff during that September 6, 2012 visit, or at any other time. In fact, during her examination,
19 Guevara gave a history of a hysterectomy to Respondent's office staff.

20 45. Respondent also was paid by Medi-Cal for Family PACT program services
21 rendered to M.M. (Montgomery) for a visit on October 15, 2012. Respondent billed Medi-Cal for
22 initial evaluation and providing of oral contraceptives, as well as for providing family planning
23 education/counseling to M.M. Respondent was paid \$109.19 and \$12.72 for M.M.'s October 15,
24 2012 visit. This billing was fraudulent, and represents a violation of Code sections 810 and 2234,
25 subdivision (e), as Montgomery was not provided family planning services or
26 education/counseling by Respondent or his staff during that October 15, 2012 visit, or at any
27 other time.

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46. Respondent procured Phentermine to be sold or dispensed in his weight management practice by writing prescriptions to himself. Respondent prescribed Phentermine to himself on or about October 14, 2011, October 26, 2011, June 8, 2012, January 28, 2013, and February 25, 2013.

47. Respondent and co-defendants were indicted on a total of fifty-five counts, including insurance fraud, grand theft, unlawful prescribing, and other charges, on or about September 17, 2013. Shortly thereafter, on or about September 27, 2013, as a condition of Respondent's bail, the Superior Court issued an Order that prohibited Respondent from prescribing or dispensing Schedule II through V controlled substances.

48. On or about March 28, 2014, despite the court's order, Respondent issued a prescription for Zantac, Xanax, Motrin and Deplin to patient S.C. Xanax is a brand name for alprazolam, a benzodiazepine and a schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d) (1).

49. On or about May 6, 2014, despite the court's order, Respondent issued, or caused to be issued a renewal of a previously expired prescription for Phentermine to patient E.J. Phentermine is a stimulant and a schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (f) (4).

DISCIPLINARY ALLEGATIONS

FIRST CAUSE FOR DISCIPLINE

(Medi-Cal Fraud)

50. Respondent is subject to disciplinary action under Code sections 2234, subdivision (e), and 810, jointly and separately, in that Respondent knowingly presented or caused to be presented false or fraudulent claims to Medi-Cal for services that were not rendered. The circumstances are as follows:

51. Allegations of paragraphs 21 through 49 are incorporated herein by reference.

III.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Fraud in Medical Documents)

3 52. Respondent is subject to disciplinary action under Code sections 2261 and
4 2262, jointly and separately, in that he made or signed, or caused to be made or signed,
5 documents directly or indirectly related to the practice of medicine which falsely represented the
6 existence or nonexistence of a state of facts, and created or caused to be created false medical
7 records. Circumstances are as follows:

8 53. Allegations of paragraphs 21 through 49 are incorporated herein by reference.

9 THIRD CAUSE FOR DISCIPLINE

10 (Violation of Statutes Regulating Dangerous Drugs and
11 Controlled Substances; Inappropriate Dispensing)

12 54. Respondent is subject to disciplinary action under Code sections 2238 and
13 2242, jointly and separately, in that Respondent prescribed and/or dispensed, or caused to be
14 prescribed and/or dispensed, controlled substances and dangerous drugs in violation of the laws
15 regulating controlled substances and dangerous drugs. The circumstances are as follows:

16 55. Allegations of paragraphs 21 through 49 are incorporated herein by reference.

17 56. Each of the following acts, together and separately, constituted a violation of the
18 Medical Practice Act as follows:

19 A. Respondent's failure to properly label the diet pills dispensed at his office as
20 alleged hereinabove was a violation of Code section 2238.

21 B. Respondent's failure to maintain controlled substances in the manner consistent
22 with Code section 4172 and California Code of Regulations, Title 16, Division 13, Chapter 2,
23 Article 1, Section 1356.3, was a violation of Code section 2238.

24 C. Respondent's making of controlled substances and/or dangerous drugs to be
25 dispensed and/or distributed by unlicensed members of his staff, in a manner alleged herein is a
26 violation of Code section 2238.

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1 D. Respondent's dispensing of controlled substances and/or dangerous drugs in the
2 manner alleged herein, without an appropriate prior examination and a medical indication, was a
3 violation of Code section 22-42.

4 FOURTH CAUSE FOR DISCIPLINE

5 (Gross Negligence)

6 57. Respondent is subject to disciplinary action under Code section 22-34,
7 subdivision (b), in that he was grossly negligent in his care and treatment of four patients. The
8 circumstances are as follows:

9 58. Allegations of paragraphs 21 through 49 are incorporated herein by reference.

10 59. Each of the following acts, together and separately, constituted an extreme
11 departure from the standard of care:

12 A. Respondent's inadequate history and physical examination and his failure to
13 follow up and/or monitor patient L.K.'s weight loss treatment constituted an extreme departure
14 from the standard of care.

15 B. Respondent's fraud in prescribing, examination, counseling and documentation
16 of contraceptive care to patient L.K. constituted an extreme departure from the standard of care.

17 C. Respondent's method of dispensing controlled substances and dangerous drugs
18 in his office to patient L.K. constituted an extreme departure from the standard of care.

19 D. Respondent's inadequate history and physical examination and his failure to
20 follow up and/or monitor patient C.P.'s weight loss treatment constituted an extreme departure
21 from the standard of care.

22 E. Respondent's fraud in prescribing, examination, counseling and documentation
23 of contraceptive care to patient C.P. constituted an extreme departure from the standard of care.

24 F. Respondent's method of dispensing controlled substances and dangerous drugs
25 in his office to patient C.P. constituted an extreme departure from the standard of care.

26 G. Respondent's Physician Assistant's inadequate history and physical
27 examination and his failure to follow up and/or monitor patient C.R.'s weight loss treatment,
28

1 constituted an extreme departure from the standard of care by Respondent pursuant to Code
2 section 3501, subdivision (a)(6).

3 H. Respondent's fraud in prescribing, examination, counseling and documentation
4 of contraceptive care to patient C.R. constituted an extreme departure from the standard of care.

5 I. Respondent's method of dispensing controlled substances and dangerous drugs
6 in his office to patient C.R. constituted an extreme departure from the standard of care.

7 J. Respondent's Physician Assistant's inadequate history and physical
8 examination, and his failure to follow up and/or monitor patient M.M.'s weight loss treatment,
9 constituted an extreme departure from the standard of care by Respondent pursuant to Code
10 section 3501, subdivision (a)(6).

11 K. Respondent's fraud in prescribing, examination, counseling and documentation
12 of contraceptive care to patient M.M. constituted an extreme departure from the standard of care.

13 L. Respondent's method of dispensing controlled substances and dangerous drugs
14 in his office to patient M.M. constituted an extreme departure from the standard of care.

15 FIFTH CAUSE FOR DISCIPLINE

16 (Repeated Negligent Acts)

17 60. Respondent is subject to disciplinary action under Code section 2234,
18 subdivision (c) in that he was repeatedly negligent in his care and treatment of four patients. The
19 circumstances are as follows:

20 61. Allegations of paragraphs 21 through 49 are incorporated herein by reference.

21 62. Each of the following acts, together and separately, constituted a departure from
22 the standard of care:

23 A. Respondent's inadequate history and physical examination and his failure to
24 follow up and/or monitor patient L.K.'s weight loss treatment constituted a departure from the
25 standard of care.

26 B. Respondent's fraud in prescribing, examination, counseling and documentation
27 of contraceptive care to patient L.K. constituted a departure from the standard of care.

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1 C. Respondent's method of dispensing controlled substances and dangerous drugs
2 in his office to patient L.K. constituted a departure from the standard of care.

3 D. Respondent's inadequate history and physical examination and his failure to
4 follow up and/or monitor patient C.P.'s weight loss treatment constituted a departure from the
5 standard of care.

6 E. Respondent's fraud in prescribing, examination, counseling and documentation
7 of contraceptive care to patient C.P. constituted a departure from the standard of care.

8 F. Respondent's method of dispensing controlled substances and dangerous drugs
9 in his office to patient C.P. constituted a departure from the standard of care.

10 G. Respondent's Physician Assistant's inadequate history and physical
11 examination and his failure to follow up and/or monitor patient C.R.'s weight loss treatment
12 constituted a departure from the standard of care by Respondent pursuant to Code section 3501,
13 subdivision (a)(6).

14 H. Respondent's fraud in prescribing, examination, counseling and documentation
15 of contraceptive care to patient C.R. constituted a departure from the standard of care.

16 I. Respondent's method of dispensing controlled substances and dangerous drugs
17 in his office to patient C.R. constituted a departure from the standard of care.

18 J. Respondent's Physician Assistant's inadequate history and physical
19 examination and his failure to follow up and/or monitor patient M.M.'s weight loss treatment
20 constituted a departure from the standard of care by Respondent pursuant to Code section 3501,
21 subdivision (a)(6).

22 K. Respondent's fraud in prescribing, examination, counseling and documentation
23 of contraceptive care to patient M.M. constituted a departure from the standard of care.

24 L. Respondent's method of dispensing controlled substances and dangerous drugs
25 in his office to patient M.M. constituted a departure from the standard of care.

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1 SIXTH CAUSE FOR DISCIPLINE

2 (Inadequate Record Keeping)

3 63. Respondent is subject to disciplinary action under Code section 2266 in that he
4 failed to keep adequate and accurate medical records of four patients, L.K., C.P., C.R., and M.M.

5 64. The allegations of paragraphs 21 through 49 are incorporated herein by
6 reference.

7 SEVENTH CAUSE FOR DISCIPLINE

8 (False Advertising)

9 65. Respondent is subject to disciplinary action under Code section 2271 in that
10 Respondent engaged in false and/or misleading advertising. The circumstances are as follows:

11 66. The allegations of paragraphs 21 through 49 are incorporated herein by
12 reference.

13 67. Respondent's advertisement, which he placed, or caused to be placed in a
14 Spanish-language publication called "Classificado" on or about September 5, 2012, was false and
15 misleading as to the cost of the weight loss program, in that the advertisement offered a weight
16 loss program with a free initial consultation and free medications or pills for the first week of the
17 program, and \$25.00 per week thereafter, but omitted any information that weight loss patients
18 would be required to enroll in the Family PACT program, and that Medi-Cal would be billed for
19 any services rendered to them in connection with the weight loss program that was being
20 advertised.

21 EIGHTH CAUSE FOR DISCIPLINE

22 (Self-Prescribing)

23 68. Respondent is subject to disciplinary action under Health and Safety Code
24 section 11170 and Business and Professions Code sections 2238 and 2239 in that Respondent
25 prescribed controlled substances to himself. The circumstances are as follows:

26 69. The allegations of paragraphs 21 through 49 are incorporated herein by
27 reference.

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1 NINTH CAUSE FOR DISCIPLINE

2 (Prescribing Controlled Substances While Prescribing Privileges

3 Were Restricted Pursuant to Court Order)

4 70. Respondent is subject to disciplinary action under Health and Safety Code
5 section 11155 and Business and Professions Code section 2238 in that Respondent issued or
6 renewed prescriptions for the schedule IV controlled substances Xanax and Phentermine, while
7 his authority to issue controlled substance prescriptions was restricted pursuant to a court order.
8 The circumstances are as follows:

9 71. The allegations of paragraphs 21 through 49 are incorporated herein by
10 reference.

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Medical Board of California issue a decision:

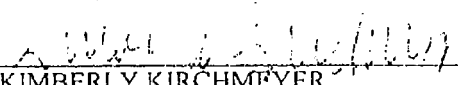
14 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 64211,
15 issued to THOMAS H. LIN, M.D.;

16 2. Revoking, suspending or denying approval of Thomas H. Lin, M.D.'s authority to
17 supervise physician assistants, pursuant to section 3527 of the Code;

18 3. If placed on probation, ordering Thomas H. Lin, M.D. to pay the Medical Board of
19 California the costs of probation monitoring; and

20 4. Taking such other and further action as deemed necessary and proper.

21 DATED: April 30, 2015

22 
23 KIMBERLY KIRCHMEYER
24 Executive Director
25 Medical Board of California
26 Department of Consumer Affairs
27 State of California
28 Complainant

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